Document No. 4073
Voted at Meeting of 5/28/81

MEMORANDUM MAY 28, 1981

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: LAFAYETTE PLACE PARKING GARAGE DOCUMENTS;
REQUEST TO RATIFY AND CONFIRM

In order to implement the construction of the public parking facility as part of the Lafayette Place project, the City of Boston has entered into a number of agreements with the developer, Lafayette Place Parking Associates. These documents include a 40-year lease, pursuant to which the developer will construct and operate the facility for the City and will pay an annual rental to the City.

In order to facilitate the lease agreement, and in order to discharge its own responsibilities under the Tripartite Agreement of December 22, 1978, the Boston Redevelopment Authority has been asked to enter into a number of subsidiary agreements with the City and the developer. These are listed below, and copies of each are attached to this Memorandum:

1. Escrow Agreement between the City, the developer, the Authority, and the law firm of McCormack and Zimble, acting as escrow agent, to hold certain executed documents until the finalization of a CARD designation, the UDAG funding, and necessary building permits.

2. A letter agreement by the Boston Redevelopment Authority not to sponsor other new public parking facilities in competition in the immediate area of the Lafayette Place garage (but excluding facilities already existing).

3. A consent by the Authority to allow the Boston Real Property Board to lease the garage location to the developer.

4. A Deposit Agreement among the City, the Authority, the developer, and the Shawmut Bank, under which $5.9 million obtained through issuance of general obligation bonds of the City shall be deposited with the depository bank and released to the developer in reimbursement of approved project costs.

5. A letter agreement by the Authority that the interest accruing in the depository fund described above may likewise be used in reimbursement of eligible project costs.

6. An agreement by the City and the Authority acknowledging that the developer shall not be held responsible for past project delays for reasons beyond its control (in return for reciprocal waivers by the developer).

These documents were executed on May 20, 1981, subject to approval by vote of the Boston Redevelopment Authority. It is therefore requested that the Authority ratify and confirm the attached documents as of the dates stated therein.

An appropriate vote follows.

VOTED: That the six (6) documents attached hereto and executed by the Director of the Authority on its behalf are hereby ratified and confirmed as of the effective date(s) provided therein.

ESCROW AGREEMENT

This Agreement is made as of the 20th day of May, 1981 among Lafayette Place Parking Associates, a Massachusetts limited partnership ("Lafayette"), the Boston Redevelopment Authority, a public body politic and corporate, ("BRA"), the City of Boston, a municipality within the Commonwealth of Massachusetts ("City"), and the law firm of McCormack and Zimble ("Escrow Agent").

Reference is made to the following facts:

A. On or about the date hereof, three counterpart copies of each of the agreements or documents identified on Exhibit A attached hereto and made a part hereof have been executed and delivered to the Escrow Agent to be held in accordance with the provisions hereof. Following the date hereof, the City, Lafayette and the BRA shall exercise best efforts to cause three counterpart copies of each of the agreements or documents identified on Exhibit B to be executed and delivered to the Escrow Agent to be held in accordance with the provisions hereof. Such agreements and documents are collectively referred to as the "Escrowed Documents" and are individually referred to as set out in Exhibit A or Exhibit B.

B. The Escrowed Documents relate principally to the construction, maintenance and operation by Lafayette of a public parking facility, pursuant to the terms of the Lease. It is the intention of the parties hereto by this Agreement to provide the terms upon which the Escrowed Documents shall be released from this escrow, following which the parties thereto shall be bound and benefited by the terms thereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree:

1. The Escrow Agent is hereby designated by Lafayette, the BRA and the City to hold and dispose of the Escrowed Documents in accordance with the terms hereof and the Escrow Agent hereby agrees to do so.

2. The City and the BRA agree, for the benefit of Lafayette, as expeditiously as possible:

a) To cause the entire area known as Lafayette Place to be designated a so-called Commercial Area Revitalization District, such designation to be undertaken in the form required by counsel to Lafayette.

b) To cause, in cooperation with Lafayette, the structures and facilities to be constructed under the Lease to be approved by the Boston Industrial and Development Financing Authority and/or the Massachusetts Industrial Development Financing Authority (as determined by and in form acceptable to counsel to Lafayette) for tax-exempt financing.

c) To cause the funding, in the full amount of $8,000,000, of the UDAG Escrow Agreement.

d) To cause to be issued all building permits and all other permits needed to commence and continue full construction of said structures and facilities.

Lafayette may waive performance of any of the foregoing items.

3. Lafayette agrees, for the benefit of the City and the BRA, to deliver to the Escrow Agent a legal opinion from Messrs. Palmer & Dodge stating that the Waiver has been duly executed on behalf of Lafayette Place Associates and may be held and applied as provided by the terms of this Agreement. Neither the City nor the BRA may waive this item without the prior written consent of Lafayette.

4. The Escrow Agent hereby agrees to hold the Escrowed Documents until the BRA and the City, and Lafayette have caused to be performed their obligations set forth above in paragraphs 2 and 3, respectively. If, on or before July 22, 1981 (which date may be extended by agreement signed by Lafayette, the BRA and the City and given to the Escrow Agent and, as now established or hereafter extended, is herein called the "Date"), the Escrow Agent shall have received all of the Escrowed Documents and shall receive notice in the form attached hereto as Exhibit C, purporting to be executed on behalf of the parties set out therein, then it shall forthwith deliver counterpart copies of the Escrowed Documents to each of the parties thereto, this Agreement shall terminate and the parties shall thereafter be bound in accordance with the provisions of the Escrowed Documents.

If the Escrow Agent shall not so receive all of the Escrowed Documents and/or shall not receive notice in such form by the Date, the Escrow Agent shall destroy all Escrowed Documents held by it and promptly notify the parties of such destruction, following which this Agreement shall terminate and neither party hereto shall have further recourse hereunder to the other.

Neither the execution nor the termination of this Agreement shall affect the rights and duties of the BRA, the City or Lafayette as against each other pursuant to agreements other than the Escrowed Documents, except as set forth in the Escrowed Documents upon their favorable release from the escrow hereby created.

5. Any instruction, notice or other communication given hereunder shall be effective if in writing and given by registered or certified mail, return receipt requested, or delivered in hand to the party entitled to receive the same, to these addresses:

(a) If to Lafayette:

Lafayette Place Parking Associates
One Boston Place - 32nd Floor
Boston, Massachusetts 02108

(b) If to the BRA:

One City Hall Plaza
Boston, Massachusetts 02201
Attention: Director

(c) If to the City:

One City Hall Plaza
Boston, Massachusetts 02201
Attention: Corporation Counsel

(d) If to the Escrow Agent:

McCormack & Zimble
225 Franklin Street
Boston, Massachusetts 02201
Attention: Edward J. McCormack

or to such other address or addresses as the party to receive such instruction, notice or other communication shall from time to time designate by like notice to all of the other parties. Any instruction, notice or other communication shall be effective only upon receipt.

6. The party designated below as Escrow Agent hereby accepts such designation. The Escrow Agent shall be obligated to perform only such duties as are specifically set forth in this Agreement and shall not be liable for any action taken, omitted or suffered by him in good faith and believed by him to be authorized or within the discretion or right or powers conferred upon him hereby and may conclusively rely and shall be protected in acting or refraining from

acting in reliance upon an order, an opinion of counsel or upon any certificate, request or other document believed by him to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be bound by any modifications of this Agreement unless such modification is in writing and signed by the parties hereto unless the Escrow Agreement shall have given prior written consent thereto. If a controversy arises between one or more of the parties thereto, or between any of the parties hereto and any person not a party hereto as to whether or not or to whom the Escrow Agent shall deliver all or any portion of the Escrowed Documents , or in the event that the Escrow Agent shall be uncertain as to his duties or rights hereunder or shall receive instructions with respect to the Escrowed Documents which in his opinion are in conflict with any of the provisions of this Agreement, the Escrow Agent shall be entitled to refrain from taking any action other than to keep safely the Escrowed Documents until he shall have been directed otherwise by a writing signed by Lafayette, the BRA and the City or by final order of a court of competent jurisdiction over the dispute. The Escrow Agent shall not be responsible in any manner whatsoever for any failure or inability of the City, the BRA or Lafayette to honor any of the provisions of the Escrowed Documents. The Escrow Agent shall incur no liability hereunder whatsoever except in the event of willful misconduct or gross negligence as long as he has acted in good faith and the parties hereto shall indemnify the Escrow Agent against all liability hereunder except for that occasioned by his willful misconduct or gross negligence.

7. The Escrow Agent may resign at any time upon not less than 15 days' prior written notice to Lafayette, the BRA and the City, provided that a successor Escrow Agent shall have been appointed prior to the effective date of such resignation. If a successor Escrow Agent shall not have been appointed by Lafayette, the BRA and the City within 10 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent. Every successor Escrow Agent appointed hereunder shall execute and deliver to Lafayette, the BRA and the City and the resigning Escrow Agent an instrument accepting such appointment, and thereupon such resignation shall become effective and the successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of the resigning Escrow Agent; but on request of Lafayette, the BRA and the City or the successor Escrow Agent, such resigning Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent all the rights and powers of the resigning Escrow

Agent, and shall duly transfer and deliver to such successor Escrow Agent all of the Escrowed Documents held by such resigning Escrow Agent hereunder.

8. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns and shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

EXECUTED under seal.

LAFAYETTE PLACE PARKING ASSOCIATES
By: Mondev Mass., Inc.,
its general partner

By _____
Its Executive Vice President
Hereunto duly authorized

BOSTON REDEVELOPMENT AUTHORITY

By _____
Its Director
Hereunto duly authorized

Approved as to form:

_____
Harry J. Haddad
BRA General Counsel.

CITY OF BOSTON
By: Its Real Property Board

By _____
Its Chairman
Hereunto duly authorized

ESCROW AGENT
MCCORMACK & ZIMBLE

By _____

Approved as to form:

_____
Corporate Counsel
City of Boston

EXHIBIT A

ESCROWED DOCUMENTS

1. Lease entitled "Lafayette Place Garage Forty-Year Lease" dated May 20,1981, between the City of Boston and Lafayette Place Parking Associates.

2. Letter from Collector-Treasurer, Auditor and Real Property Board of the City of Boston, dated May 20, 1981 with respect to funding of an agreement entitled "Deposit Agreement", dated May 20, 1981, among the City of Boston, the Boston Redevelopment Authority, Lafayette Place Associates and Shawmut Bank of Boston, N.A., a Massachusetts correspondent of Manufacturers Hanover Trust Company.

3. Opinion dated May 20, 1981 from Corporation Counsel for the City of Boston.

4. Letter dated May 20, 1981 from the City of Boston to the City of Boston Real Property Board with respect to hiring obligations.

5. Non-competition agreement, dated May 20, 1981 from the Boston Redevelopment Authority, and the Mayor of the City of Boston.

6. Letter entitled "Consent", dated May 20, 1981, from the Boston Redevelopment Authority to the City and Lafayette Place Parking Associates.

7. Document entitled "Notice of Lease", dated May 20, 1981, between the City and Lafayette Place Parking Associates.

8. Letter from the City of Boston, by its Real Property Board, with respect to additional funding of agreement entitled "Deposit Agreement", dated May 20, 1981, among the City of Boston, the Boston Redevelopment Authority, Lafayette Place Associates and Shawmut Bank of Boston, N.A., a Massachusetts correspondent of Manufacturers Hanover Trust Company.

9. Letter dated May 20, 1981 from the Boston Redevelopment Authority to Lafayette Place Parking Associates with reference to interest on $4,600,000.

EXHIBIT B

ESCROWED DOCUMENTS

1. Document entitled "Deposit Agreement", dated May 20, 1981, among the City of Boston, the Boston Redevelopment Authority, Lafayette Place Associates and Shawmut Bank of Boston, N.A., a Massachusetts correspondent of Manufacturers Hanover Trust Company.

2. Agreement, dated , 1981, amending and assigning a certain contract between the City of Boston (by its Real Property Board) and Desmond & Lord, architects.

3. Document entitled "Second Supplemental Agreement to Tripartite Agreement", dated , 1981, among City of Boston, Lafayette Place Associates and the Boston Redevelopment Authority.

4. Document entitled "Waiver", dated , 1981 from Lafayette Place Associates for the benefit of the City of Boston.

EXHIBIT C

NOTICE

The undersigned, being parties to an Escrow Agreement dated May 20, 1981, hereby advise you (in your capacity as Escrow Agent under said Agreement) that the conditions referred to in said Agreement to be satisfied for their benefit have been so satisfied (or, if not satisfied, may be treated by you as waived on behalf of the party entitled to the benefit thereof) and you are hereby instructed to deliver the Escrowed Documents out of escrow.

LAFAYETTE PLACE PARKING ASSOCIATES
By: Mondev Mass., Inc.,
its general partner

By_____
Its
Hereunto duly authorized

BOSTON REDEVELOPMENT AUTHORITY

By_____
Its
Hereunto duly authorized

CITY OF BOSTON
By: Its Real Property Board

By_____

May 20, 1981

Lafayette Place Parking Associates
One Boston Place - 32nd Floor
Boston, Massachusetts 02108

Re: Lafayette Place Parking Garage

Gentlemen:

On or about this date you have entered into a forty-year lease with the Real Property Board of the City of Boston with respect to the above parking facility. In further implementation of the intent of subparagraph (q) on page 18 of said lease, the undersigned hereby agree, to the extent permitted by law, that during the terms of said lease they shall take such steps as may be necessary to prohibit or prevent any agency of the City of Boston, directly or indirectly, from licensing, owning, leasing, controlling, operating, or otherwise being associated with any public parking facility of any type (whether below, at or above grade) within the area outlined in the map attached to said lease as Exhibit G, excluding, however, from this agreement any such public parking facilities presently existing or any renewals thereof.

Very truly yours,

BOSTON REDEVELOPMENT AUTHORITY

By _____
Its
Hereunto duly authorized

CITY OF BOSTON

By _____
Mayor

CONSENT

May 20, 1981

City of Boston, acting by
and through its Real Property Board
City Hall
1 City Hall Plaza
Boston, Massachusetts 02201
and
Lafayette Place Parking Associates
One Boston Place - 32nd Floor
Boston, Massachusetts 02108

Gentlemen:

On or about this date the City of Boston, acting through its Real Property Board (the "City"), is about to enter into a lease (the "Lease") with Lafayette Place Parking Associates ("Lafayette") for a term of forty years, relative to the Lafayette Place Parking Garage, on Washington Street, in Boston. The real estate on which said garage will be constructed was acquired by the City by Deed from the undersigned dated October 12, 1979, recorded at Suffolk Deeds, Book 9288, Page 38. Development of such real estate is subject to the terms of said Deed and provisions of a certain Land Disposition Agreement dated October 12, 1979, recorded with Suffolk Deeds at Book 9288, Page 66. Said Deed and said Land Disposition Agreement are herein collectively referred to as the "Development Documents".

In consideration of the execution of said Lease and for other good and valuable consideration, the undersigned hereby agrees as follows with respect to the Development Documents:

1. All schedule requirements for commencement and completion of construction of the City Improvements (as defined in the Development Documents) are hereby deleted and the schedule therefor shall hereafter be as set forth in the Lease.

2. Consent is hereby given to the transfer of an interest in said real estate on the terms set forth in the Lease. In this connection, the undersigned acknowledges that Lafayette Place Parking Associates has in writing and to our satisfaction assumed the obligations of the City with respect to construction of said City Improvements.

3. The Plans and Specifications referred to and defined in the Lease are hereby specifically approved as and shall

be the Final Plans and Specifications (under the terms of said Land Disposition Agreement) relative to construction of said City Improvements, the undersigned hereby acknowledging that they are consistent with the Plan (as defined in said Land Disposition Agreement).

4. All requirements for submission of progress schedules under Section 303(d) of said Land Disposition Agreement shall be treated as satisfied upon submission of such schedules with respect to construction of said City Improvements as may be required of Lafayette under the Lease.

5. The undersigned shall hereafter perform its obligations under said Land Disposition Agreement for the benefit of Lafayette Place Parking Associates, its successors and assigns, as successors thereunder to the City.

Executed under seal.

BOSTON REDEVELOPMENT AUTHORITY

By _____
Robert J. Ryan
Its Director

Approved as to form:

_____
BRA ~~Corporation~~ Counsel.

DEPOSIT AGREEMENT

This agreement is made this 20th day of May , 1981 among the City of Boston, acting by and through its Real Property Board, its Collector-Treasurer and its Auditor, (the "City"), the Boston Redevelopment Authority (the "BRA"), Lafayette Place Associates, a Massachusetts limited partnership ("Lafayette") and Shawmut Bank of Boston, N.A., a Massachusetts correspondent of Manufacturers Hanover Trust Company, a New York banking corporation (the "Depository").

W I T N E S S E T H

Reference is made to the following facts:

A. By that certain agreement dated December 22, 1978, (as heretofore or hereafter amended or supplemented, the "Tripartite Agreement") the BRA has undertaken, among other things, responsibility for payment to Lafayette of the cost of certain municipal improvements (the "Plaza, Malls and Circulation System", as defined in Section 5.07 of the Tripartite Agreement). Monies for such payment are to be obtained through the issuance of general obligation bonds of the City heretofore authorized.

B. Under the Tripartite Agreement, the City has undertaken, among other things, responsibility relative to completion of a municipal parking facility (the "Parking Garage", as defined in the Tripartite Agreement) and, without limitation, to expend appropriate monies therefor. Such monies have been raised, in part, by the issuance of general obligation bonds of the City in the amount of $17,000,000 of which $1,971,897.54 remain unexpended.

C. By the execution hereof the parties desire to assure the availability of portions of the proceeds of said bonds for application in accordance with the provisions of the Tripartite Agreement relative to the Parking Garage and relative to the Plaza, Malls and Circulation System.

NOW, THEREFORE, in consideration of these presents and the mutual obligations of the City, the BRA and Lafayette under the Tripartite Agreement, it is hereby agreed as follows:

1. As soon as funds are available therfor, the City will deliver and deposit the same to the Depository in the total amount of $5,900,000 (the "Deposit"). The Depository shall hold the Deposit under two separate accounts (to be established with its correspondent, Manufacturers Hanover Trust Company) one in the amount of $4,600,000 (the "BRA Account") and one in the amount of $1,300,000 (the "RPB

Account"). The Deposit shall be held by the Depository in interest bearing obligations of the federal government or any state government or any agency of either such government or any other investment permitted by law (the same to be selected by Depository, but the maturities thereof shall never exceed 180 days). All accrued interest thereon shall be held as part of the Deposit and applied in accordance with instructions from time to time given by City to Depository.

2. The BRA confirms and agrees to perform its obligations under the Tripartite Agreement relative to the Plaza, Malls and Circulation System and further agrees that the portion of the Deposit held in the BRA Account shall be used only for such purpose.

3. The City confirms and agrees to perform its obligations under the Tripartite Agreement and under Exhibit A attached hereto relative to payment for costs incurred in connection with the Parking Garage and that the portion of the Deposit held in the RPB Account shall be used only for such purpose. The City and Lafayette together shall have the right from time to time to amend Exhibit A and upon delivery of such amendment to the Depository the most recent amendment of Exhibit A shall govern the rights of the parties hereunder relative to the RPB Account.

4. To obtain funds held by the Depository in the BRA Account, Lafayette may from time to time present to the Depository a statement, designated as "Approved" by the architect and/or general contractor acting for Lafayette, setting forth expenditures theretofore made by it or on its behalf in causing design and/or construction of the Plaza, Malls and Circulation System. Such statement shall also be designated as "Approved" by the Collector-Treasurer and Auditor of the City and shall request disbursement by Depository of an amount not in excess of such expenditures, except that no more than 15% of the portion of the Deposit held in the BRA Account may be requested to be disbursed prior to commencement of construction of the Plaza, Malls and Circulation System. Within three (3) days after receipt of such statement the Depository shall pay to Lafayette the amount requested therein to the extent it is then holding sums sufficient therefor in the BRA Account.

5. To obtain funds held by the Depository in the RPB Account, Lafayette may from time to time present to the Depository a statement, designated as "Approved" by the architect and/or general contractor for the Parking Garage, setting forth expenditures then made by it or on its behalf in causing construction of portions of the Parking Garage enumerated on Exhibit A and matters related thereto. Such

statement shall be designated as "Approved" by the Collector-Treasurer and Auditor of the City and shall request disbursement by Depository of an amount not in excess of such expenditures. Within three (3) days after receipt of such statement the Depository shall pay to Lafayette the amount requested therein to the extent it is then holding sums sufficient therefor in the RPB Account.

6. The City, the BRA and Lafayette shall promptly and without delay deliver to the Depository, upon their mutual satisfaction that they have each performed hereunder, a signed acknowledgement indicating that the Depository may pay to the City the balance of all funds then being held by the Depository under both the BRA Account and the RPB Account. Upon receipt thereof the Depository shall pay such funds to the City and this Agreement shall terminate.

7. The Depository shall have no liability hereunder except for its willful action taken in bad faith in violation of the provisions hereof. Without limitation, the Depository may always rely and act upon and in accordance with any statement from the parties under Sections 4 and 5, above, and shall have no obligation to seek any independent verification of any matters reflected therein.

8. Lafayette shall indemnify and hold Depository harmless from all loss (including loss resulting from liquidation of investments) or damage it may suffer or incur hereunder except for actions by Depository referred to in the first sentence of Section 7 hereof.

9. Notices, demands or other communications hereunder shall be given to the following addresses:

Depository: One Federal Street
Boston, Massachusetts 02211
Attention: Corporate Trust Department

with a copy to:

Manufacturers Hanover Trust Company
270 Park Avenue
New York, New York 10017
Attention:
W. Geoffrey Grout, Vice President

BRA: One City Hall Plaza
Boston, Massachusetts 02201
Attention: City Treasurer

Lafayette: One Boston Place - 32nd Floor
Boston, Massachusetts 02109
Attention: Peter A. Howlett

-and-

c/o Mondev Mass., Inc.
One Westmount Square - Suite 600
Montreal, Quebec H3Z 2R5

with a copy to:

James B. White, Esquire
Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108

EXECUTED under seal.

BRA: BOSTON REDEVELOPMENT AUTHORITY

By _____
Its Director
Hereunto duly authorized

Lafayette: LAFAYETTE PLACE ASSOCIATES
By: Mondev Mass., Inc.
its general partner

By _____
Its Executive Vice President
Hereunto duly authorized

Depository: By _____
Its
Hereunto duly authorized

City: By: its Real Proprty Board

By _____
Its Chairman

By _____
Collector-Treasurer

By _____
Auditor

EXHIBIT A

This City shall be responsible for payment of the following percentages of all costs necessary to design and complete in usable fashion the following elements to the Parking Garage and all matters associated therewith:

1. All escalators - 1 up and 1 down in each location (100%)

2. All elevators and Machine Rooms (40%)

3. Parking Garage roof (air rights platform)

   (a) Insulation over structural deck - Retail Area (100%)

   (b) Waterproofing over structural deck - Plaza Area (100%)

   (c) Concrete topping with steel trowel finish over insulation in Retail Area ready to receive floor finishes (100%)

4. All Supply and Exhaust Fan Systems and Mechanical/Electrical Extentions (100%)

5. Interior & Exterior Signage (100%)

6. Design fee of 6% of all costs associated with the foregoing.

May 20, 1981

Lafayette Place Parking Associates
One Boston Place - 32nd Floor
Boston, Massachusetts 02108

Gentlemen:

Reference is made to that certain Deposit Agreement executed on or about this date among us and others, under which, among other things, $4,600,000 is to be held and applied as therein stated. Subject to any necessary appropriation therefor (but without obligation on our part or on the part of the City of Boston to seek such appropriation), we shall direct that all interest on such amount be held as part of and applied in the same manner as the funds in the BRA Account (as defined in said Deposit Agreement).

Executed under seal.

BOSTON REDEVELOPMENT AUTHORITY

By _____
Robert J. Ryan
Its Director

Approved as to form:

_____
BRA ~~Corporation~~ Counsel.

ACKNOWLEDGEMENT

This Acknowledgement is entered into this 20th day of May , 1981, by the City of Boston, acting by and through its Real Property Board (the "City") and by the Boston Redevelopment Authority (the "BRA") for the benefit of Lafayette Place Associates, a Massachusetts limited partnership ("Lafayette").

W I T N E S S E T H

Reference is made to the following facts:

A. By agreement dated December 22, 1978 (as heretofore or hereafter amended or supplemented, the "Tripartite Agreement"), the parties hereto and Lafayette entered into mutual obligations relative to development of a parcel of land on Washington Street in Boston, Massachusetts. Said development is known as Lafayette Place and consists of public and private components and the portions thereof with respect to which performance is to be made by the public sector are herein referred to as the "Public Improvements" and the portions thereof with respect to which performance is to be made by the private sector are herein referred to as the "Private Improvements". That portion of the Public Improvements consisting of a municipal parking facility is herein referred to as the Parking Garage, which definition shall have the meaning given to it under the Tripartite Agreement, as the context so admits or requires.

B. The Tripartite Agreement established a schedule for construction of the Public Improvements, timely completion of which was essential to enabling Lafayette to meet its obligations to third parties, such as lenders, with respect to construction of the Private Improvements.

C. The City initially attempted to engage independent contractors to build the Parking Garage in pursuance of the City's obligations under the Tripartite Agreement. The City has determined at this time that such approach to construction of the Parking Garage has failed and in lieu thereof the City has developed and now wishes to conclude an alternative procedure for construction of the Parking Garage. Such procedure is the solicitation pursuant to St. 1946, c.474, as amended, of public bids for lease and construction of the Parking Garage and the execution of such lease and related documents.

D. Subsequent to execution of the Tripartite Agreement, the City and the BRA have suffered enormous and unanticipated economic and fiscal burdens and restraints from federal, state and local causes, all of which have impeded their

ability to perform their prior obligations and have led to the conclusion herein expressed.

E. By the execution hereof, the parties desire to provide for the matters herein set forth relative to delays incurred thus far in construction of the Public Improvements.

NOW, THEREFORE, the City and the BRA acknowledge that Lafayette is now in compliance with the Tripartite Agreement and that delays incurred thus far in connection with construction of the Public Improvements, including the Parking Garage, have occurred without the fault of Lafayette for causes entirely beyond its control and to which Lafayette in no way contributed and for which Lafayette in no way was responsible. Except as herein expressly provided, this Acknowledgement shall not waive or release any rights of the parties under the Tripartite Agreement.

EXECUTED under seal.

CITY OF BOSTON
By: Its Real Property Board

By _____
Its Chairma
Hereunto duly authorized

BOSTON REDEVELOPMENT AUTHORITY

By _____
Its Director
Hereunto duly authorized

Approved as to form:

_____
BRA ~~General~~ Counsel.